



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

DECISION

[REDACTED]
c/o James A. Jaeger
Hill, Glowacki, Jaeger, Reiley, Zimmer & Hughes, LLP
P.O. Box 3006
Madison, WI 53704

MRA-13/46076

PRELIMINARY RECITALS

Pursuant to a petition filed September 18, 2000, under Wis. Stat. § 49.455(8)(c) (1999-00) and Wis. Admin. Code § HFS 103.075(8)(c) (November 2000), to establish that petitioner's wife needs income above the level provided by the Medical Assistance (MA) program's Minimum Monthly Maintenance Needs Allowance (MMMNA), a fair hearing was held on December 12, 2000 in Madison, Wisconsin. At petitioner's request the record of the December 12, 2000 hearing was held open until December 22, 2000.

Hearings set for October 11, 2000, October 27, 2000, and November 15, 2000 were rescheduled at petitioner's request.

The issue for determination is whether it has been established that petitioner's wife needs income above the level provided by the MMMNA.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o James A. Jaeger
Hill, Glowacki, Jaeger, Reiley, Zimmer &
Hughes, LLP
Attorneys At Law
2158 Atwood Avenue
P.O. Box 3006
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Represented by:

James A. Jaeger
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Department of Health Care Financing (DHCF)
Division of Health
Department of Health & Family Services (DHFS)
State of Wisconsin

1 West Wilson Street
Room 250
P.O. Box 309
Madison, Wisconsin 53701-0309

By: No appearance
Dane County Department of Human Services
Division of Economic Assistance & Work Services
2322 South Park Street
Madison, Wisconsin 53713-1918

OTHER PERSONS PRESENT:

[REDACTED] petitioner's wife

HEARING OFFICER:

Sean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN [REDACTED] CARES [REDACTED]) is a resident of Dane County.
2. Petitioner claims monthly expenses for his wife of approximately \$2,729.55 and is requesting that her MMMNA be increased to that amount. Exhibit #1.
3. The following monthly expenses are among those claimed by petitioner for his wife:
 - (A) Basic living expenses (food, clothing, personal care products, housekeeping supplies, misc.) -- \$620.00
 - (B) Dental Expenses -- \$17.00;
 - (C) Eye examinations & glasses -- \$20.00;
 - (D) American Automobile Association (AAA) -- \$6.50;
 - (E) Newspaper -- \$24.00.
 - (F) Cable television -- \$39.00.

TOTAL OF THE ABOVE: \$726.50.

Exhibits #1, #12, #13, #14 & #15.

4. In petitioner's case the MMMNA, provided for by law without a fair hearing or court order, is \$2,175.00. Exhibits #1, #2, #3, #4, #5, #6 & #7.

DISCUSSION

Despite repeated inquiries no one appeared at the December 12, 2000 hearing to represent the Dane County Department of Human Services.

Petitioner is a nursing home resident and is receiving MA. Petitioner's wife lives in the community.

When an MA recipient is in a nursing home all of that recipient's income, with certain limited exceptions not relevant here, must be used to pay nursing home costs. MA pays any nursing home costs which exceed the recipient's income.

Many MA recipients who are nursing home residents are (like petitioner) married and have spouses who live in the community. In these cases, the law recognizes that requiring all of the recipient's income to be used to pay nursing home costs may leave the community spouse in poverty. In order to prevent the impoverishment of the community spouse, the law allows the community spouse to keep up to a certain maximum amount of income per month. This is known as the "Minimum Monthly Maintenance Needs Allowance" (MMMNA). The MMMNA provided for by law without a fair hearing is the lesser of \$2,175.00 or \$1,875.00 plus excess shelter costs. Wis. Stat. § 49.455(4)(c) (1999-00), MA Handbook, Appendix 23.6.0.; See also, Wis. Admin. Code § HFS 103.075(6)(b) (November 2000). In petitioner's case the MMMNA, provided for by law without a fair hearing or court order, is \$2,175.00.

The MMMNA can be increased if either spouse establishes at a fair hearing that, due to exceptional circumstances resulting in financial duress, the community spouse needs income above the level provided by the MMMNA. Wis. Stat. § 49.455(8)(c) (1999-00); Wis. Admin. Code § HFS 103.075(8)(c) (November 2000); MA Handbook, Appendix 23.6.0.

The phrase "exceptional circumstances resulting in financial duress" means situations that result in the community spouse not being able to provide for his or her own necessary and basic maintenance needs. Wis. Admin. Code § HFS 103.075(8)(c) (November 2000); MA Handbook, Appendix 23.6.0.

Thus, the burden is on the person seeking an increase in the MMMNA. It must be established that the community spouse needs income above the level provided by the MMMNA in order to avoid a situation that would result in the community spouse not being able to provide for his or her own necessary and basic maintenance needs. A product or service is not a necessary and basic maintenance need simply because the community spouse purchased it on a routine basis prior to the recipient going into a nursing home.

The following monthly expenses claimed by petitioner for his wife cannot be allowed as necessary and basic maintenance needs for the reasons indicated:

- (A) Basic living expenses (food, clothing, personal care products, housekeeping supplies, misc.) -- \$620.00, there is not sufficient evidence in the record of this matter to support this expense;
- (B) Dental Expenses -- \$17.00, there is not sufficient evidence in the record of this matter to support this expense (documentation of such expenses, which petitioner testified she incurred only twice per year with \$17.00 being a monthly average, is easily obtainable but was not provided by petitioner);
- (C) Eye examinations & glasses -- \$20.00, there is not sufficient evidence in the record of this matter to support this expense (documentation of such expenses, which petitioner testified she

incurred only once per year with \$20.00 being a monthly average, is easily obtainable but was not provided by petitioner);

(D) American Automobile Association (AAA) -- \$6.50, this is not necessary or basic and it is not a maintenance need;

(E) Newspaper -- \$24.00, this is not necessary or basic and it is not a maintenance need;

(F) Cable television -- \$39.00, this is not necessary or basic and it is not a maintenance need.

TOTAL OF THE ABOVE: \$726.50.

Petitioner's attorney argues that the \$620.00 per month in "basic living expenses" is justified by use of the "Monthly National Standards" used by the Internal Revenue Services (IRS). Exhibits #12 & #13. However, the Monthly National Standards are based strictly on a person's gross income. There is no evidence that the Monthly National Standards represent only necessary and basic maintenance needs. To the contrary, \$620.00 per month appears excessive for a person in the circumstances of petitioner's wife and cannot be justified in the absence of detailed supporting documentation. The only documentation provided by petitioner does not support \$620.00 per month and, according to petitioner's attorney, provides only examples and is not exhaustive. Exhibits #14 & #15.

Petitioner claims monthly expenses for his wife of approximately \$2,729.55. This amount minus the above expenses that are not allowable is \$2,003.05 (\$2,729.55 minus \$726.50). The amount of \$2,003.05 is less than the MMMNA provided for petitioner by law without a fair hearing or court order (\$2,175.00). Thus, petitioner has failed to establish that his wife needs income above the level provided by the MMMNA.

Two other aspects of petitioner's case must be noted. First, it is highly questionable whether or not the monthly expenses for a cellular telephone for petitioner's wife are a necessary and basic maintenance need. See, Exhibits #1 & #11. Second, petitioner owns an African American Heritage business. This business currently runs at a loss. See, Exhibit #13. However, petitioner's wife expects that the business will become profitable in the next few years. If the business does become profitable it may have a significant impact on the amount of petitioner's patient care liability.

CONCLUSIONS OF LAW

It has been not been established that petitioner's wife needs income above the level provided by the MMMNA.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, Wisconsin 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in section 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.


APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on the Wisconsin Department of Health and Family Services, P.O. Box 7850, Madison, Wisconsin 53707-7850.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in section 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this 9 day
of February, 2001.


Sean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals
02072001/SPM

xc:
Dane County Department of Human Services
Susan Wood, DHFS
